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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 759 (RMB)

5 JAMES MOORE,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 February 11, 2020  
9:30 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

VLADISLAV VAINBERG

17 Assistant United States Attorney

18 TARTER, KRINSKY & DROGIN

19 Attorneys for Defendant

MICHAEL GRUDBERG

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(Defendant not present)

THE COURT: I take it Mr. Moore is not here; probably too late notice or something to get him, but I think that's fine. I just wanted to get a status from you all.

MR. VAINBERG: Yes, your Honor. Just at the outset, the government would like to apologize for not having Mr. Moore produced today.

THE COURT: It's no problem.

MR. VAINBERG: There was a failure on our part. We understand he could be made available at 4 o'clock, but we're able to proceed. And I know Mr. Grudberg had some conversations last night about proceeding here today.

THE COURT: So is it okay, counsel, to waive his appearance?

MR. GRUDBERG: As I said to Mr. Vainberg, your Honor, I did reach out on Corrlinks to see if I could get a waiver of today's appearance from Mr. Moore. Unfortunately, I don't have a simple answer to that, but as I said to Mr. Vainberg, what it adds up to is so long as the Court is not taking any action today and we're just providing the update I think the Court is interested in, then I'm prepared to proceed.

THE COURT: What is Corrlinks?

MR. GRUDBERG: It's I think a commercial name for the email vendor both for counsel and for family members that the inmate can sign up for.

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1 THE COURT: So that is always -- that means that the  
2 inmate can always have contact with you and/or family by email?

3 MR. GRUDBERG: I won't bore with you the flies in that  
4 ointment; sometimes you don't get the alerts from the system  
5 when the client emails you. It is not a privileged email  
6 system for purposes of counsel, but it's a relatively 24-hour  
7 communication system.

8 THE COURT: And is it privileged for family? I'm  
9 curious.

10 MR. GRUDBERG: I don't think there's any  
11 confidentiality that attaches to it for any user. You get  
12 those warnings when you sign on. You can arrange -- if time  
13 permits, arrange for a privileged call through a counselor, but  
14 it's best not to use Corrlinks for truly privileged  
15 communications.

16 THE COURT: And Corrlinks -- first I'm hearing it,  
17 actually; long time, years?

18 MR. GRUDBERG: I would say about a decade, your Honor.

19 THE COURT: Okay. And is that the preferred way, so  
20 to speak, for counsel and defendant to correspond?

21 MR. GRUDBERG: I use it as a stopgap. If there's  
22 something serious to talk about, I get on the train, but it  
23 does help for purposes of updates.

24 THE COURT: Right. Okay. Of course, when you go  
25 there person to person, that is privileged.

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1 MR. GRUDBERG: That is.

2 THE COURT: Got it.

3 MR. GRUDBERG: Thank you, Judge.

4 THE COURT: So I have been following this. I read the  
5 forensic report, and I just wasn't clear where you all are at,  
6 and I thought I would just ask for a status update.

7 MR. VAINBERG: So your Honor, obviously we have  
8 digested the forensic report which we got the morning of the  
9 last conference. It is in some way a report that sort of tugs  
10 in two different directions. We noticed from the government's  
11 side there's a number of what I would call positive findings in  
12 the report regarding Mr. Moore's cognitive abilities, his  
13 abilities to understand what is going on. It notes that his  
14 sort of current delusions did not exist during the trial but  
15 are newly developed, notes his abilities to express himself to  
16 counsel and others, to understand the PSR process, to  
17 understand his sentencing exposure, the guidelines. It notes  
18 that there are no indications of a prior history of mental  
19 illness or these sort of delusions in his past.

20 And then it sort of describes his complaints of a  
21 potential conspiracy to set him up and the sorts of letters  
22 that your Honor and counsel have received from Mr. Moore, and  
23 then sort of concludes as a bottom line, as a result of that,  
24 he's not competent to proceed. That finding is somewhat  
25 curious because the order that your Honor signed, of course, on

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1 August 26 simply requested an examination as to whether he's  
2 competent to proceed pro se towards sentencing. It looks like  
3 the psychologist sort of took the assignment in a different  
4 fashion and issued an order that sort of talks about competency  
5 writ large for these proceedings, but nonetheless, here we are.

6 What the government has been trying to understand with  
7 the Bureau of Prisons is the process by which Mr. Moore can  
8 receive treatment within the confines of a restoration order,  
9 which is what Dr. Kissin recommends, or outside of it. What we  
10 understand BOP's position is is that now there is a finding by  
11 a BOP psychologist that he's not competent, that the next  
12 appropriate step should be the issuance of a 2241(d) order  
13 which would begin the restoration process.

14 The way that process would work, according to who we  
15 have talked to, is that Mr. Moore would be designated to one of  
16 three facilities that deal with mental restoration of male  
17 inmates. So that would be FMC Butner in North Carolina, USMCFP  
18 Springfield in Missouri, or FMC Fort Worth in Texas. At any of  
19 those intuitions the restoration team would include at least  
20 one assigned social worker, a psychologist and a psychologist,  
21 that team would monitor Mr. Moore's progress, adjust his  
22 medication or treatment as necessary, and issue a final report  
23 once he's restored to competency. That team would be able to  
24 consult with FMC Devins where he was evaluated, but they would  
25 be making their own independent decisions as to his condition

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1 and his competence going forward.

2 We have also asked about the possibility of this Court  
3 issuing a general order for Mr. Moore to receive treatment sort  
4 of outside the confines of that process. And that's really an  
5 area where we're still trying to get some more information  
6 whether that's feasible or not. Our understanding is that the  
7 BOP's sort of concerns with that kind of order is that although  
8 there are psychiatrists at the MCC, for example, who are  
9 forensic psychologists, they don't do restorations and they're  
10 not in a position to opine on competency. They could treat him  
11 but wouldn't be able to sort of state as a legal matter he's  
12 now competent. And because there's a competency sort of  
13 finding, there's a concern that they're not in a position to  
14 treat him and sort of figure out the interplay between those  
15 two issues.

16 And their other concern is because outside of the  
17 restoration process there wouldn't be a mechanism to find that  
18 he has been restored to competency. There's also not an  
19 ability for them to require Mr. Moore to take medication  
20 outside of a 2241(d) order. So that's why the BOP's suggestion  
21 is that the Court issue a 2241(d) order. Like I said, there's  
22 a few more questions that we have, including the question of  
23 whether your Honor would need to find in that order that  
24 Mr. Moore is not competent or whether your Honor can sign a  
25 2241 order requiring the restoration process to begin without

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1 making that finding based on the report.

2 THE COURT: Just so the record is clear, you're  
3 saying, particularly at page 10 of the January 6, 2019 report,  
4 I mean there's certainly a lot more in here than I'm referring  
5 to, but there is a section on page 10 that says: However,  
6 Mr. Moore's rational understanding of his legal situation  
7 appears to be significantly undermined by his symptoms of his  
8 mental illness. It goes on to say there was no indication  
9 Mr. Moore was experiencing disordered thinking about his  
10 charges until the conclusion of his trial. However, since his  
11 conviction in June 2019, he has become convinced that a case  
12 against him is in fact a manifestation of a plot to divert  
13 blame from other parties for their illegal activities, and has  
14 grown increasingly concerned he will be killed in an effort to  
15 prevent him from divulging information about these individuals.  
16 His paranoid concerns have spread to include his family members  
17 as well as his attorney. Mr. Moore's preoccupying paranoid  
18 ideas have become increasingly encompassing, penetrating all  
19 aspects of his daily functioning and driving his thinking  
20 vis-a-vis the instant legal case against him.

21 That's essentially what you're referring to about the  
22 finding in the report?

23 MR. VAINBERG: Right. That is the basis for finding  
24 him not competent to proceed.

25 THE COURT: Okay. So where do you think this is

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1 heading, counsel, or how do we get there? I assume you want  
2 further discussion with Mr. Moore about the report and all  
3 these various options.

4 MR. GRUDBERG: Of course, and I will, your Honor. I  
5 guess in terms of Mr. Moore's reaction to the report and its  
6 recommendations, for immediate purposes I would refer back to  
7 what he told the Court the last time we were together. I  
8 believe he is open and desires to have the treatment that is  
9 recommended.

10 With respect to the choice between particulars that  
11 Mr. Vainberg has raised, I haven't had the opportunity to talk  
12 with him about one means of an order versus another, but it is  
13 my understanding that he's open to take medication. Again,  
14 without coming back to merits of the report of, all I would say  
15 that without taking issue with the observation that Mr. Moore  
16 is able to go back and forth about objective mechanics of the  
17 next phase of the proceeding, it has been my experience -- and  
18 your Honor has received the correspondence that detail it --  
19 that when these moments emerge when Mr. Moore becomes more  
20 agitated about his personal safety, it can be consuming. So I  
21 think we have a little bit of on or off situation that we're  
22 confronting here, and hopefully, of course, treatment would  
23 address that.

24 The other thing is I haven't had a chance to discuss  
25 with him -- it sounds like from what BOP counsel is reporting,



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1 that the official places at which teams exist to render this  
2 treatment are all far from the courthouse. I think bottom line  
3 is he wants and needs that treatment, so wherever it is, it is,  
4 but I would like to be able to get some information from BOP  
5 staff as to how people in his setting are transported in an  
6 ordinary non-medical setting. That can be a long process  
7 stopping at county courthouses -- excuse me, county jails along  
8 the way, and I think that would be less than helpful for  
9 somebody in his situation, but obviously we don't make those  
10 rules.

11 THE COURT: They don't have anything like that in Fort  
12 Dix, for example, closer at hand?

13 MR. VAINBERG: We're told that those are the only  
14 three facilities that are currently doing restorations.

15 THE COURT: Butner and what are the other two?

16 MR. VAINBERG: It's Butner, North Carolina,  
17 Springfield in Missouri, and Fort Worth in Texas.

18 THE COURT: Okay. Next steps, what do you think? And  
19 how much time before we take the next steps?

20 MR. VAINBERG: Well, so from the government's side, we  
21 need to iron out some of the logistics with the BOP about the  
22 form of the order that we may recommend to your Honor. And I  
23 think from Mr. Grudberg's side he needs to speak with his  
24 client and understand the logistics of the transport issues so  
25 he could explain that.

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1 THE COURT: In developing that proposed order, you'll  
2 meet and confer with defense counsel?

3 MR. VAINBERG: Yes. If I may have a moment to confer  
4 with Mr. Grudberg on the timeline?

5 THE COURT: Sure. One small note, this report on page  
6 one is I think it's a typo or mistake, it says January 6, 2019,  
7 it's obviously I think 2020. Right?

8 MR. VAINBERG: Yes.

9 MR. GRUDBERG: Right.

10 THE COURT: So I will make that change on mine and for  
11 the record.

12 Sorry, didn't mean to interrupt. And I do have one  
13 more question for defense counsel, but it can wait.

14 (Pause)

15 MR. VAINBERG: We have just conferred, and we think  
16 that we can be in a position to report back within  
17 approximately a week. So perhaps Thursday next week, if that  
18 day works for the Court.

19 THE COURT: You want Thursday next week, which is the  
20 20th?

21 MR. GRUDBERG: The 20th.

22 THE COURT: How about 11:30 on that day?

23 MR. VAINBERG: That works for the government.

24 THE COURT: Okay. So I wanted to ask: Is there  
25 family interaction with him?

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1 MR. GRUDBERG: Telephonic, your Honor. I know there  
2 is some reference in the substance of the report to his  
3 children. They all live in the United Kingdom, they're all in  
4 Europe. He has remarried, his wife is -- I don't believe she's  
5 in this country. She has family of her own in South America.  
6 They're in frequent touch telephonically.

7 THE COURT: There's nobody who is visiting him except  
8 for yourself is what I'm trying to say.

9 MR. GRUDBERG: That's correct.

10 THE COURT: Okay. Then I will see you on the 20th at  
11 11:30.

12 MR. VAINBERG: Thank you, your Honor.

13 MR. GRUDBERG: Thank you.

14 THE COURT: Thanks so much.

15 (Adjourned)  
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